

NTSB Order No. EA-5036

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of April, 2003

Docket SE-16492

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on May 20, 2002, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding

7537

that respondent had violated 14 C.F.R. sections 91.7(a), 91.9(a), and 91.13(a) of the Federal Aviation Regulations (FARs), 14 C.F.R. Part 91.² He also affirmed the Administrator's proposed 90-day suspension of respondent's air transport pilot (ATP) certificate. We deny the appeal.

Respondent was the pilot-in-command of a Cessna 172 on a passenger-carrying flight from Michigan to Pittsfield, Massachusetts. A few miles short of the Pittsfield airport, the engine began running rough and respondent determined to land short of the runway. He landed on a frozen pond. His passenger called his wife who, on respondent's instructions, obtained five gallons of automobile gas, which they put in one of the wing tanks. The engine still would not start. The passenger and his wife returned to the gas station and got another five gallons of gas, which was put in the other wing tank. The engine started and respondent flew the aircraft to the airport.

The Administrator's charge in this case has nothing to do with the reasons why the aircraft ended up on the pond. The charge is solely related to the use of auto gas to fly the aircraft off the pond. Use of auto gas was not authorized by the aircraft's type certificate. The placard on the tanks indicated an avgas requirement. Therefore, the evidence leaves no doubt that respondent violated sections 91.7(a) and 91.9(a).

² Section 91.7(a) prohibits operating an unairworthy aircraft. Section 91.9(a) prohibits operating the aircraft contrary to its placards. Section 91.13(a) prohibits careless or reckless operations so as to endanger the life or property of another.

Administrator v. Copsey, NTSB Order No. EA-3448 (1991) at 5, citing Administrator v. Doppes, 5 NTSB 50, 52 (1985) (to be airworthy an aircraft must be in conformance with its type certificate as well as in condition for safe flight).

Respondent counters with two arguments: (1) that the Cessna was technically able to use and safely flyable using auto gas and the only violation was a paperwork one that should not be prosecuted (or not prosecuted so aggressively)³; and (2) that the circumstances justified the actions he took.⁴ As to this second argument, he argues that landing on the frozen pond was an emergency, he wanted to get the plane off the pond as soon as possible, and that information he had from his dealings at the airport led him to believe that he would not be permitted to buy gas and take it off the airport or that, even if removing it from the airport was permitted, his prior relations with the avgas dealer there would make his purchasing gas there difficult. Therefore, he claims, it was reasonable in the circumstances for him to choose auto gas.

The second argument fails for a number of reasons. There is no evidence that the aircraft was not safe on the ice. As respondent testified, the ice was six inches thick, and nightfall

³ That is, had the aircraft's owner sought a Supplemental Type Certificate to permit the use of auto gas, one would have been issued.

⁴ Respondent also for the first time offers various challenges to the reliability of the testimony of the Administrator's witness, and to the neutrality of the law judge, none of which merits discussion.

was nearing (which generally, and no evidence to the contrary being of record, leads to colder temperatures). There is no testimony even that the ice was heard to crack. But, even assuming that getting the aircraft off the pond as soon as possible was a critical and legitimate goal, we are not convinced that they would not have been able to purchase avgas at the airport and take it to the aircraft. Even respondent's passenger testified that he would have tried that first. Indeed, respondent's fears regarding his own relations with the avgas dealer at the airport appear irrelevant in the face of the fact that it was the passenger's wife and the passenger who went to buy gas. The airport was no further away than the gas station. Further, had respondent been so concerned about the aircraft on the ice, he should have enlisted the help of the available ice fisherman to pull the aircraft off the pond. That, clearly, would have been the most prudent course had there truly been a danger of the ice breaking. We cannot on this record find that the charge should be dismissed because the circumstances justified respondent's action.

The first argument is also unpersuasive. We agree with respondent that this was a paperwork violation. There was no danger to the aircraft or its passengers in the use of auto gas. A Supplemental Type Certificate would have been issued if requested. However, the Administrator legitimately may choose to prosecute such paperwork violations to maintain the integrity of the record-keeping system. See, e.g., Administrator v. Nunes, et

al., NTSB Order No. EA-4567 (1997) at 13-14 ("If aircraft records cannot be relied on as accurate, the viability of the entire aircraft maintenance system is doubtful."). And, the 90-day sanction is well within the Administrator's sanction guidance, which provides for a suspension for operating unairworthy aircraft of from 30 to 180 days.

We cannot disagree that in this case a 90-day suspension is appropriate. Respondent holds an ATP certificate and, as a result of the heightened responsibility that certificate carries, is held to the highest standard of behavior and responsibility. Respondent has not behaved at that level. Respondent's written submissions do not reflect the compliance disposition the Administrator is entitled to expect from ATP holders. Indeed, his retraction of an earlier statement that he would do the exact same things should the circumstance recur is accompanied by a comment that he would get himself "to a guaranteed safe position and let the FAA worry about the property concerns." Addendum at 2. This, combined with his attitude towards the FAA inspector and the law judge, shows a disrespect and disregard for the regulations and those who enforce them.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to strike is denied;
2. Respondent's appeal is denied; and
3. The 90-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.⁵

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

⁵ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).